

REMARKS/ARGUMENTS

Applicant has carefully reviewed and considered the Office Action mailed on November 4, 2005.

No claims are amended, canceled, or added; as a result, claims 1-39 are now pending in this application.

Restriction/Election

The Examiner stated that restriction to one of the following inventions was required under 35 U.S.C 121:

I. Claims 12-18 and 31-37, drawn to an imaging system, classified in class 250, subclass 208.1.

II. Claims 1-11, 19-22, 28-30, 38, and 39, drawn to a position sensing apparatus and method, classified in class 250, subclass 231.12.

III. Claims 23-27, drawn to a code sheet, classified in class 250, subclass 237G.

Restriction to one of the following species was further required under 35 U.S.C. 121:

I. Species I: an encoder with a regular light source without refraction (claims 1-11).

II. Species II: an encoder with a light source that emits light in two or more directions and with refraction (claims 19-22, 28-30, and 38-39).

Applicant provisionally elects, with traverse, to prosecute the invention of Group II, Species II (viz., claims 19-22, 28-30, and 38-39). The restriction requirement is traversed, at least in part, on the basis that Restriction Requirements are optional in all cases. MPEP 803. As the section further states, if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits.

Applicant notes that each independent claim (viz., claims 1, 10, 12, 19, 23, 28, 31, and 38) is drawn generally to sensing emitted light that has passed through more than one window. For example, independent imaging system claim 31 in Group I recites:

[T]he position sensing assembly having a code sheet and a combined encoder and index sensor arrangement for sensing of the current location of the movable element employing angular

emission of light, refraction [through windows] and sensing of the light.

Independent apparatus claim 1 of Group II recites:

a light source to emit light to pass through a portion of a track of windows, with the portion of the track configured to allow a different amount of the light to pass through relative to other portions of the track; and
a plurality of sensors to sense the light for encoding and indexing.

Independent "code sheet" claim 23 of Group III recites:

a selected one of the first windows and the second windows have a refractive index suitable to refract light in a predetermined angle.

With regard to the two species, Applicant calls the Examiner's attention to the species both being placed in the same class 250 and subclass 231.13. In searching for references regarding the independent claims in each of Groups I-III, in addition to the independent claims in these species, the Examiner likely will be identifying references applicable to each of the other independent claims. Therefore, the search will not create a serious burden for the Examiner.

Finally, it is respectfully submitted that Applicant should not be required to incur the additional costs associated with the filing of multiple divisional applications in order to obtain protection for the claimed subject matter.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement, and that claims 1-39 of the present application be examined on the merits together. In the alternative, Applicant respectfully requests modification of the Restriction Requirement such that Species I and II remain united for further prosecution on the merits.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney Gregg W. Wisdom at (360) 212-8052 to facilitate prosecution of this matter.

At any time during the pendency of this application, please charge any additional fees or credit overpayment to the Deposit Account No. 08-2025.

CERTIFICATE UNDER 37 CFR §1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS AMENDMENT Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450 on this 1st day of December, 2005.

Sarah L. Reinhard

Name

Sarah L. Reinhard

Signature

Respectfully Submitted,
David Christenson, et al.

By their Representatives,
BROOKS & CAMERON, PLLC
1221 Nicollet Avenue, Suite 500
Minneapolis, MN 55403

By:

Jeffery L. Cameron

Jeffery L. Cameron
Reg. No. 43,527

Date:

12/01/05